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ABSTRACT

Title IX of the Education Amendments of 1972 prohibits sex discrimination in all federally funded education programs. There has been some confusion as to which single sex groups and programs are covered and which ones are exempt. Briefly discussed here are regulations covering: (1) groups whose membership practices are exempt; (2) programs operated by educational institutions; and (3) programs not operated by educational institutions but receiving significant assistance from them. (Author/KE)

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project on the status and education of **women**

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SINGLE SEX ORGANIZATIONS AND PROGRAMS UNDER TITLE IX

Title IX of the Education Amendments of 1972[1] prohibits sex discrimination in all federally funded education programs.[2] There has been some confusion as to which single sex groups and programs are covered and which ones are exempt.[3]

I. GROUPS WHOSE MEMBERSHIP PRACTICES ARE EXEMPT[4]

In December 1974, Title IX was amended to exempt the membership practices of certain organizations.[5] The statute exempts only the membership practices of these groups; programs provided by these organizations to persons other than (or in addition to) their members cannot be limited to one sex. The exemption of membership practices applies only to:

- YMCA, YWCA, GIRL SCOUTS, BOY SCOUTS, AND CAMP FIRE GIRLS.
- SOCIAL SORORITIES AND FRATERNITIES which have a 501(a) tax exemption from the Internal Revenue Service, and whose members consist primarily of students in attendance at higher education institutions.
- VOLUNTARY YOUTH SERVICE ORGANIZATIONS which have a 501(a) tax exemption from the Internal Revenue Service, and whose membership has traditionally been limited to one sex and principally to persons less than 19 years of age.

II. PROGRAMS OPERATED BY EDUCATIONAL INSTITUTIONS[6]

With few exceptions, programs operated by institutions cannot provide different benefits or services, or treat students differently on the basis of sex. However, the regulation does not prohibit (or require) affirmative action; programs aimed at women need not be abolished although some modifications may be needed.[7]

A. Women's Studies Courses:[8] All such courses must be open to both sexes. These courses, when open to both sexes, do not violate Title IX.

B. Continuing Education Programs:[9] Programs and services which are aimed at persons continuing their education must be open to both sexes. (Many continuing education programs which were originally developed for returning women students, have been open to men for several years.)

C. Programs Aimed at Improving the Status of Women:[10] Remedial programs and services provided by the institution and aimed at special groups (such as older women who have been out of school and out of the work force for a number of years) may continue, provided that men who wish to participate are not excluded. A description of such a program or course might read "This program is primarily aimed at women who have been out of the workforce and are returning to school. However, men who believe they could benefit from this service and wish to participate may do so."

Similarly, institutionally supported women's centers can continue without changing their purpose, e.g. to improve the status of women, provided that men wishing to utilize the services are allowed to do so.

D. Campus Committees on the Status of Women:[11] Such committees do not violate Title IX. However, membership cannot be restricted on the basis of sex. Having a predominantly female committee would also not violate Title IX if the members had been chosen on some basis other than sex (such as their ability to contribute constructively to the committee's activities).

III. PROGRAMS NOT OPERATED BY EDUCATIONAL INSTITUTIONS BUT RECEIVING SIGNIFICANT ASSISTANCE FROM THEM[12]

Title IX covers the activities and programs of educational institutions which receive federal funds. Unless it falls under one of the exemptions listed in Part I of this paper, any organization which receives "significant assistance" from such institution, cannot discriminate on the basis of sex in any way, including membership, programs, services or benefits.[13] Section 53 of the introductory material preceding the regulation states:

> Thus, such forms of assistance as faculty sponsors, facilities, administrative staff, etc., may be significant enough to create the nexus and to render the organization subject to the regulation. Such determination will turn on the facts and circumstances of specific situations.[14]

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(Organizations operating off campus and without significant assistance from institutions (and which do not receive direct federal funding) are not covered by Title IX.)

A. Business and Professional Fraternities, Sororities and Societies:[15] When the organization receives significant assistance from the institution, its membership must be open to both sexes. Similarly, its programs, services and benefits must be offered without discrimination on the basis of sex.

B. Women's Organizations, Such as Women's Honorary Societies, Mortar Board, Association of Women Students, etc.:[16] When these groups receive significant assistance from the institution, their membership must be open to both sexes. However, the purpose of such groups (e.g. to develop leadership in women,) does not violate Title IX. Males who subscribe to the general purpose of the organization and wish to join cannot be denied membership because of their sex. [Programs, services and benefits must also be offered to both sexes.] In practice, few males are likely to join, and those that do are likely to be sympathetic to the aims of the group. The situation is somewhat analogous to that of a campus chapter of NAACP, a group which aims to better the status of blacks, and allows whites to join.

C. Women's Centers:[17] Campus women's centers, whether operated by the institution or by students with assistance from the institution, can continue without changing their purpose (e.g. to improve the status of women). However, their membership, programs and services must be open to both sexes. (A great many centers already allow men to use their services and to participate in their programs.)

FOOTNOTES

[1] 1. 20 U.S.C. Sections 1681-1686 (1972).

[2] For a detailed analysis of Title IX, see Margaret C. Dunkle and Bernice Sandler, "Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972," Inequality in Education, No. 18, Oct. 1974, pp. 12-36.

[3] The reader is advised to consult the relevant sections of the Title IX regulation (Federal Register Vol. 40, No. 108, June 4, 1975, pp. 24128-45) for further details, and particularly for policy concerning single sex fellowships (Section 86.37); physical education classes (Section 86.34); housing (Section 86.32); and athletic programs (Section 86.41). The regulation can be obtained by writing to the Director, Office for Civil Rights, Dept. of Health, Education and Welfare, Washington, D.C. 20201, or contacting the nearest regional HEW office.

[4] See Section 86.14 of the Title IX regulation.

[5] Section 3, Pub. L. 93-568, 88 Stat. 1862. The amendment was introduced by Senator Birch Bayh, the original Senate sponsor of Title IX.

[6] See Section 86.31 of the Title IX regulation.

[7] See Section 86.3(a) and (b) of the regulation. Some people maintain that single sex activities can be conducted under some circumstances for "affirmative action" purposes. However, indications are that HEW will allow few, if any, such exceptions. Additionally, Section 86.39 of the regulation notes that, with regard to health services, a recipient is not prohibited from providing any benefit or service which may be used by a different proportion of students of one sex than of the other. The same reasoning would hold in programs for persons returning to school and for other services aimed at those who have been out of the work force. The fact that women might be the predominant users of the service would not constitute a violation of Title IX, provided the program or service were available to both sexes.

[8] In addition to Section 86.31, see Section 86.34 of the Title IX regulation.

[9] Ibid.

[10] Ibid.; also, see Section 86.3 of the Title IX regulation.

[11] Ibid.

[12] See Section 86.31(d) of the Title IX regulation.

[13] Organizations are also covered by Title IX if they receive direct federal funding for educational programs. As noted in footnote 7, some people maintain that single sex activities can be conducted under some circumstances for "affirmative action" purposes. However, indications are that HEW will allow few, if any, such exceptions.

[14] Federal Register, Vol. 40, No. 108, June 4, 1975, 24132.

[15] See Sections 86.6(c), 86.31(d) and 86.31(b)(7) of the Title IX regulation.

[16] Ibid. See also Section 86.3(a) and (b).

[17] See Sections 86.31(b)(7), and 86.3(a) and (b) of the Title IX regulation.

THE PROJECT ON THE STATUS AND EDUCATION OF WOMEN of the Association of American Colleges began operations in September of 1971. The Project provides a clearinghouse of information concerning women in education and works with institutions, government agencies, and other associations and programs affecting women in higher education. The Project is funded by the Carnegie Corporation of New York, the Danforth Foundation, and the Exxon Education Foundation. Publication of these materials does not necessarily constitute endorsement by AAC or any of the foundations which fund the Project.

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